THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.22387 OF 2005

DATED : 21ST MARCH, 2006

Between:

Mule Ragamma … Petitioner

And

1. The Asst. Commissioner of Endowments,
   Prakasam District, Ongole and
   Two others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.22387 OF 2005

ORDER :

This writ petition is filed seeking a declaration that the action of the 2nd

respondent – Sri Malleswara Swamy Temple in conducting auction dated 14-10-2005 during the subsistence of the lease without evicting the petitioner following due process of law from the land to an extent of Ac.7-84 cents situated Sy.No.326, of Chinnalatiripi Village, Gudluru Mandal, Prakasam District as arbitrary and illegal

The father of the petitioner was the cultivating tenant in respect of Ac.7-84 cents of land situated Sy.No.326, of Chinnalatiripi Village, Gudluru Mandal, Prakasam District which belongs to the 2nd respondent – Sri Malleswara Swamy Temple. The petitioner claims that after the death of her father, she continued as tenant. While so, in the year 2004 the then Managing Trustee agreed to lease out the land for a period of three years i.e., from 2004-05 to 2006-07 and accordingly a resolution was passed by the Managing Trustee by fixing maktha of Rs.8,000/-. In pursuance thereof, she has been continuing in possession and enjoyment of the land in question and cultivating the same. It is alleged that in the meanwhile the 2nd respondent issued auction notice proposing to conduct auction in respect of the leasehold rights of the land in question. The petitioner contends that the said action of the 2nd respondent is arbitrary and illegal. Hence, this writ petition.

The 1st respondent - Assistant Commissioner of Endowments filed a counter-affidavit stating that the petitioner who is not a landless poor filed O.S.No.86 of 2005 on the file of the Court of Principal Junior Civil Judge, Kandukur, Prakasam District for grant of perpetual injunction restraining the respondents from interfering with her possession. However, the application for temporary injunction was dismissed by order dated 4-10-2005. It is alleged that the then Managing Trustee in collusion with the writ petitioner created a document of extension of lease for a further period of 3 years on enhanced rate of maktha. As a matter of fact, the Managing Trustee was directed to lease out the lands under public auction, but, contrary to the same, the Managing Trustee has granted the lease in favour of the petitioner. The said extension was without approval of the competent authority and therefore the Managing Trustee of the temple was suspended in exercise of the powers under Section 28 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'the Act'). Consequently, the 2nd respondent was appointed as fit person vide proceedings dated 29-3-2005. Thus, it is contended that the petitioner is not entitled to continue in possession and the writ petition is misconceived.

The 2nd respondent filed a separate counter-affidavit stating that when a notice under Section 82 (2) of the Act in Form-I was served on the petitioner directing to hand over the possession, she filed O.S.No.86 of 2005 on the file of the Court of Principal Junior Civil Judge, Kandukur. Subsequently, when the public auction of the leasehold rights was proposed to be conducted, the respondent filed I.A.No.267 of 2005 pleading that there was standing crop on the suit schedule property. Though initially status quo was granted by the trial Court, on contest the same was dismissed. It is further stated that the Managing Trustee is not competent to extend the lease and that there is a material alteration in the receipt which was issued by the Managing Trustee before taking charge. Hence, the claim made by the petitioner that she is an existing lessee and entitled to continue in possession cannot be accepted.

The highest bidder in the auction conducted in pursuance of the impugned tender notice got himself impleaded as 3rd respondent and filed a separate counter-affidavit on the same lines.

I have heard the learned Counsel for both the parties and perused the material on record.

Since admittedly the petitioner is in possession of the land to an extent of Ac.7-84 cents she is not a landless poor person and therefore she is not entitled to the benefit of Section 82 (2) of the Act 30 of 1987. To that extent, the petitioner does not dispute, however, it is contended that by virtue of the lease granted by the then Managing Trustee, she is entitled to continue upto 2006-07 as a lessee. In support of her case, the petitioner placed before this Court the letter said to have been addressed by the then Managing Trustee, in which it is stated that the temple committee has considered her request and passed a resolution on 28-4-2004 by enhancing the lease amount from Rs.5,000/- to Rs.8,000/- for a period of 3 years.

At the outset, it is to be noted that by virtue of Section 82 of the Act all leases of agricultural lands subsisting on the date of the commencement of the Act shall stand cancelled. Admittedly, the 2nd respondent has already issued a notice of

termination in terms of the Statutory Rules. That apart, as per the Rules made under Section 82 of the Act under G.O.Ms.No.379, dated 11-3-2003 all leases of agricultural lands shall be only by public auction. Hence, even assuming that there was any resolution by the temple committee on 28-4-2004, in pursuance of which the then Managing Trustee extended the lease in favour of the petitioner, the same is not valid and cannot be accepted under the provisions of the Act.

Once, the lessee is found to be not a landless poor person, it is open to the institution or endowment to grant fresh lease in accordance with law.

In the circumstances, I am unable to accept the plea of the petitioner that she is entitled to continue in possession.

Since the action of the 2nd respondent in proposing to conduct public auction for grant of leasehold rights of the land in question is in accordance with law, the interference by this Court is not warranted.

Accordingly, the Writ Petition is dismissed. No costs.

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G. ROHINI, J.

Dt. 21-03-2006.

GBS